

REMARKS

Claims 1-4, 6, 8, 10-12, 14, 16, 24, 25, 30-32, 34, 35 and 37-43 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,990,073 issued to Sandoval ("Sandoval") in view of U.S. Patent No. 6,907,001 issued to Nakayama et al. ("Nakayama"), and further in view of Bass, U.S. Patent Publication No. 2003/0035373 ("Bass"). In light of the foregoing amendments and following remarks, Applicants respectfully request the Examiner's reconsideration and reexamination of all pending claims.

Independent claim 1 recites:

A method comprising:
receiving data from a transmitting device transmitting data at a first non-zero rate to a memory for storage therein during a first period of time;
generating a first data quantity value representing a quantity of data stored in the memory at a first point in time,
comparing the first data quantity value to a first predetermined value;
causing the transmitting device to transmit data at a second non-zero rate to the memory for storage therein during a second period of time, in response to the comparing;
modifying the first predetermined value in response at least in part to the comparing the first data quantity value to the first predetermined value;
wherein the second period of time is subsequent to the first period of time; and wherein the second non-zero rate is greater than the first non-zero rate.

The Office Action admits that neither Sandoval nor Nakayama disclose modifying the first predetermined value in response at least in part to the comparing the first data quantity value to the first predetermined value. See Office Action, p. 4, first full paragraph. However, the Office Action argues this missing limitation can be found in paragraph [0019] of Bass, which recites:

[0019] The destination 112 receives the data packets 106 in a packet processor 122. The data packets 106 are provided to a buffer queue 124 having a maximum capacity of Qmax. A threshold circuit compares the occupancy of the queue 124 with thresholds T1 and T2 specified by the present invention. The threshold circuit 130 periodically provides an updated transmit rate to a transmit rate register 119. The threshold circuit 130 calculates and sets a lower threshold T1 and an upper threshold T2 in the buffer 124 based upon Max value 132, Qmax value 134. The details of calculating the thresholds T1 and T2 are based on queuing analysis which will be provided hereinafter. The thresholds T1 and T2 are the thresholds in the buffer 124 used to prevent underflow and overflow, respectively. While two thresholds are described, any number of thresholds may be calculated for the buffer as will be described hereinafter. The transmit rate stored in the register 119 is then periodically communicated from a transmit rate unit 136 to the sender 102 via a communications link 142.

Emphasis added. Applicants respectfully disagree that Bass teaches modifying the first predetermined value in response at least in part to the comparing the first data quality value to the first predetermined value.

Paragraph [0019] teaches comparing the occupancy of queue 124 (presumably equated with the claimed first data quantity value representing a quantity of data stored in the memory at a first point in time) with thresholds T1 and T2 (presumably equated with the claimed first predetermined value).

To anticipate “modifying the first predetermined value in response at least in part to the comparing the first data quantity value to the first predetermined value” paragraph [0019] must teach “modifying T1 or T2 in response at least in part to the comparing the occupancy of queue 124 to T1 or T2.” However, paragraph [0019] does not teach modifying T1 or T2, let alone modifying T1 or T2 in response to comparing the occupancy of queue 124 to T1 or T2.

An online dictionary defines modify as “to change in form or character.” One of ordinary skill in the art understands that modifying T1 or T2 would result in a new value. But paragraph [0019] of Bass teaches calculating, not modifying T1 and T2. Calculating doesn’t necessarily mean modifying. Further, Applicants point to paragraph [0063] of Bass which indicates that T1 and T2 are computed “at initialization time from Qmax.” This implies T1 and T2 are not modified after “initialization.” Further, according to paragraph [0019] of Bass, Qmax, is the maximum capacity of buffer queue 124, and thus one of ordinary skill in the art understands that Qmax does not change. Since paragraph [0063] of Bass indicates that T1 and T2 are computed from Qmax, Bass would imply that T1 and T2 do not change.

Claim 1 recites a temporal relationship between the comparing and modifying steps...modifying occurs in response to the comparing. Bass teaches circuit 134 initially calculating T1 and T2, and then the threshold circuit compares T1 and T2 to the level of data packets awaiting processing and temporarily stored in the buffer 124. Paragraph [0019] of Bass does not teach the reverse order of calculating T1 and T2 after comparing T1 and T2 to the level of data packets awaiting processing and temporarily stored in the buffer 124. But claim 1 requires this reverse order since the first predetermined value is modified in response at least in part to the comparing the first data quantity value to the first predetermined value (i.e., T1 or T2).

For these reasons, Applicants submit that independent claim 1 is patentably distinguishable over the cited sections of Sandoval, Nakayama, and Bass. Independent claims 10, 24, 30, and 31 contain similar limitations as those argued above.

For the same or similar reasons, Applications submit that claims 10, 24, 30, and 31 are patentably distinguishable over the cited sections of Sandoval, Nakayama, and Bass. All remaining claims are dependent and are patentable for this reason.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to Deposit Account 502306.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric A. Stephenson', with a long horizontal line extending to the right.

Eric A. Stephenson
Attorney for Applicants
Reg. No. 38,321
Telephone: (512) 439-5093
Facsimile: (512) 439-5099